IMPORTANT NOTICES & CIRCULAR

RATE OF INTEREST ON GOVERNMENT LOANS

It is hereby notified that the Minister of Finance has, in terms of Section 80(1)(a) and (b) of the Public Finance Management Act 1 of 1999, fixed the Standard Interest Rate applicable, from 1 March 2016 and until further notice, to loans granted by the State out of a Revenue Fund, and /or to all other debts which must be paid into a Revenue Fund, at 10.25% per annum.

The above-mentioned Standard Interest Rate is applicable from 1 March 2016 and until further notice, to all drawings of loans from State money, except loans in respect of which other rates of interest are specifically authorized by legislation or the Minister of Finance.

Source: GG 39802, 11.03.16

COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION TARIFF OF FEES

Under section 123 (3) of the Labour Relations Act 66 of 1995, as amended, the Commission for Conciliation, Mediation and Arbitration published the tariff of fees as established by the Governing Body in the Annexure effective from the 1st of April 2016.

Source: GG 39807, 11.03.16

REVISED FINANCIAL SECTOR CODES

Comment is sought within 60 days on a draft revised code of good practice for broad-based black economic empowerment (B-BBEE) in the financial sector. The proposed new code seeks to respond to the 'unique position' occupied by financial institutions in the context of SA’s ongoing development. This is especially given government’s commitment to improving access to financial services for the ‘previously unbanked and under-served’.

With that in mind, the proposed new B-BBEE scorecard for the sector includes two elements not featured in the generic code. Based on initiatives at the core of the original sector charter, these focus on facilitating: access to affordable housing; finance for black-owned small, medium and micro enterprise and agricultural activity; and investment in ‘various types of transformational infrastructure’ fundamental to equitable economic growth.

Underpinning these proposals is a recognition of the sector’s potential to play a more significant role in sustainable wealth creation across a broader base than is currently the case – by ‘leveraging its unique position in the allocation of resources from savers to borrowers’. Against that background, the draft revised code seeks to encourage both domestic and foreign measured entities to participate in equity equivalent programmes underpinned by National Development Plan, ‘black industrialisation’, enterprise development and empowerment financing imperatives.

Source: Legalbrief 18 March 2016

RETRENCHED WORKERS TO BENEFIT UNDER NEW LAW

MPs from various political parties unanimously agreed to amendments in the Unemployment Insurance Act during a meeting of the Portfolio Committee on Labour. Parliament held public hearings on the draft legislation, receiving input from various stakeholders. After deliberations during the committee meeting, the Bill was passed by MPs and will now be referred to the National Assembly for enactment. The report says the Bill will provide a significant boost to workers who have just lost their jobs. It will extend the period during which unemployment insurance is paid out to workers who have lost their jobs from eight to 12 months. In addition, unemployment insurance benefits will also apply to learners and civil servants who are undergoing learnership training.
The accrual rate of people who contribute to the Unemployment Insurance Fund will also be adjusted, and they will be entitled to more benefits under specific circumstances, including maternity benefits.

Source: Legalbrief 10 March 2016

PUBLIC PROCUREMENT BILL TO ADDRESS SYSTEM ABUSE

Given that a legislative review focusing on government’s supply chain management has identified the need for ‘decisive action’ against suppliers abusing the system, a Public Procurement Bill in the process of being finalised will seek to vest the power to disbar them with the Office of the Chief Procurement Officer (OCPO). According to an SCM review update posted on the National Treasury website, a ‘mandatory disbarment period of 10 years’ is envisaged – along with deregistration by the Companies and Intellectual Property Commission, ‘blacklisting’ the company directors concerned and holding them ‘severally and jointly liable for any losses incurred by government through their actions’.

Formally establishing the OCPO, the Bill’s overarching objective will be to ensure that public sector supply chain management is ‘fair, equitable, transparent, competitive, and cost-effective’. In line with the requirements of section 217 of the Constitution (procurement), the Bill will also include provisions laying the foundations of an ‘agile system’ of preferential procurement in support of government’s socio-economic transformation imperatives.

Meanwhile – in keeping with Finance Minister Pravin Gordhan’s Budget speech commitments – a national public sector travel policy is to be implemented from 1 April, among other things introducing a standard remuneration model for affected travel agents. Negotiated corporate air travel rates will be introduced, along with centrally negotiated hotel and lodging rates and a central contract for car hire and shuttle services. These measures will eventually be extended to include a ‘conference management system’ and the compulsory use of ‘approved’ tour, coach and bus hire operators.

Source: Legalbrief 09 March 2016

MAXIMUM CREDIT INTEREST COULD BE REVISED DOWN

Trade and Industry Minister Rob Davies will be asked to urgently review maximum interest rates and fees affecting developmental credit and mortgage loans – and also to consider a ‘review of old debt’. Noting the implications for low-income South Africans of new regulations apparently due to come into effect on 13 March, the National Assembly’s Trade and Industry Committee sought a legal opinion on its powers to amend them under the National Credit Act. Having established that no such enabling provision exists, members believe that a review could go some way towards defusing what committee chair Joan Fubbs described as a level of ‘frustration’ likely to become ‘unbearable’ if something is not done soon.

Given the committee’s significant contribution over the years towards creating a more consumer-friendly credit environment, members were unanimous in agreeing that the Minister should proceed with implementing the new regulations as scheduled. Amnesties having been found to exacerbate consumer debt – and noting that a moratorium could have similar unintended consequences – a review was deemed the most appropriate first step towards ensuring not only that the plight of credit consumers is addressed in the prevailing economic slowdown, but also that ‘legitimate lenders’ survive it.

Meanwhile, according to acting deputy director-general for consumer and corporate regulation MacDonald Netshitenzhe, the association of micro lenders has applied for a court interdict preventing the regulations from being implemented – their argument presumably being that caps committee members would like to see lowered even further will put them out of business.

Source: Legalbrief 10 March 2016

RECOMMENDED READING

The pedigree of the common law and the “unnecessary” Constitution ; A discussion of the Supreme Court of Appeal decision in RH v DE, by Jaco Barnard-Naude, SALJ, Vol 133 Part 1 2016

Contesting the removal of a director by the board of directors under the Companies Act, by Rehana Cassim, SALJ, Vol 133 Part 1 2016

The legislative framework determining capacity and representation of a company in South African law and its implications for the structuring of special purpose companies, by Natania Locke, SALJ, Vol 133 Part 1 2016
RECENT SUPREME COURT OF APPEAL JUDGMENTS

VAN DER BANK v THE STATE (245/15) [2015] ZASCA 10 (09 MARCH 2016)
Appellant convicted of rape and indecent assault - sexual intercourse with sixteen year-old girl who has a mental capacity well below her age - consent alleged - consent can only be given by person capable of consenting - expert evidence proving complainant incapable of consenting - appeal dismissed.

http://www.saflii.org/za/cases/ZASCA/2016/7.html

LOURENS v SPEAKER OF THE NATIONAL ASSEMBLY OF PARLIAMENT (20827/2014) [2016] ZASCA 11 (10 MARCH 2016)
The Rules and practice of Parliament and its failure, and that of the Minister of Arts and Culture, to publish all statutes in all official languages does not constitute unfair discrimination in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

http://www.saflii.org/za/cases/ZASCA/2016/8.html

NKABINDE v THE JUDICIAL SERVICE COMMISSION (20857/2014) [2016] ZASCA 12 (10 MARCH 2016)
Complaint against judge lodged with the Judicial Service Commission (JSC) in 2008, and investigated in terms of procedure for alleged judicial misconduct applicable at that time – investigation and outcome set aside by court order, and inquiry begun de novo in 2011, by which time a new procedure was applicable in terms of amendments to the Judicial Service Commission Act 9 of 1994 (JSCA) – JSC following new procedure and establishing a Judicial Conduct Tribunal – whether the new procedure impermissibly retrospectively applied – no substantive rights affected – application of new procedure sensible, fair and just – not impermissible – whether s 24 of the JSCA, by permitting a prosecutor to be involved in the collection and leading of evidence before the Tribunal is in breach of the doctrine of the separation of powers and unconstitutional and affects judicial independence – prosecutor not part of the executive, and independence guaranteed by s 179 of the Constitution – Tribunal hearing conducted in an inquisitorial manner – prosecutor not involved in making of decision by Tribunal or JSC – doctrine of the separation of powers not infringed and judicial independence not threatened – s 24 of the JSCA accordingly not unconstitutional.


RENASA INSURANCE COMPANY LIMITED v WATSON (32/2014) [2016] ZASCA 13 (11 MARCH 2016)
Insurance policy – alleged fraudulent claim – arson – insurer failing to discharge onus of proving that insured was the arsonist or that insured is precluded from claiming loss due to his failure to take reasonable steps and precautions to prevent the loss.


MOHAPI v DE BEERS PENSION FUND (64/2015) [2016] ZASCA 14 (11 MARCH 2016)
Pension Fund Rules – Interpretation – member’s entitlement to retirement on the grounds of medical infirmity – precluded where member fairly dismissed from employment – also precluded where employer of the opinion that member not incapable of carrying working on the ground of medical infirmity.


DU TOIT v NTSHINGHILA (733/2015) [2016] ZASCA 15 (11 MARCH 2016)
Criminal Law and Procedure – disclosure – accused charged with possession of child pornography – whether prosecution obliged to furnish accused with copies of images said to constitute child pornography as part of pre-trial disclosure.


SWART v HEINE AND OTHERS (192/2015) [2016] ZASCA 16 (14 MARCH 2016)
Company law – application for rescission of an order enabling enquiry into the affairs of a company in voluntary liquidation in terms of s 417 of the Companies Act 61 of 1973 – ex parte application made to enable enquiry met the requirements of s 388 of the Act – appeal dismissed with costs.

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS v SOUTHERN AFRICAN LITIGATION CENTRE AND OTHERS (867/15) [2016] ZASCA 17 (15 MARCH 2016)

International law - International Criminal Court (ICC) – South Africa’s obligations to arrest and surrender person against whom the ICC has issued an arrest warrant – Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 – provisions of sections 4(2) and 10(9) – whether head of state enjoys immunity from arrest in terms of customary international law – provisions of section 4(1) of the Diplomatic Immunities and Privileges Act 37 of 2001 (DIPA) – whether immunity exists by virtue of hosting agreement concluded with African Union and ministerial proclamation under section 5(3) of DIPA.

Practice and procedure – application for admission as amicus curiae – rule 16 of rules of Supreme Court of Appeal – process to be followed – admission as amicus does not give rise to a right to make oral submissions – whether entitled to do so determined by Court hearing the appeal – party may only be admitted as amicus if it has new contentions to advance – what constitutes new contentions.


DISTELL LIMITED v KZN WINES AND SPIRITS CC (20291/2014) [2016] ZASCA 18 (15 MARCH 2016)

Trade mark infringement: the marks KNIGHT’S GOLD and KNIGHTS in respect of whisky are not likely to be confused with the mark BLACK KNIGHT: no infringement of s 34(1)(a) of the Trade Marks Act 94 of 1993 by selling BLACK KNIGHT in competition with KNIGHTS.


HIGH COURT JUDGMENTS

THREE WIN EQUITY PLAN BATTLE WITH MUNICIPALITY

In a victory for three officials who challenged the Nelson Mandela Bay Municipality’s employment equity policy, the metro has backed down and wants to use a different set of demographics to hire staff. The officials said the policy – which was based on national rather than local racial demographics – was unfair and discriminated against people who were not black Africans. The municipality will also no longer oppose the officials’ court challenge. Instead, it will ask Labour Minister Mildred Oliphant to promulgate a law that local demographics for municipalities be used for employment equity. Labour law consultant Tony Healy said the Employment Equity Act specified that national demographics be used. However, because there had been an outcry from people in the Western Cape and KZN, the government had relaxed its stance and allowed provincial racial demographics to be used. ‘It is unusual to use a municipal demographic for equality goals. In fact, it’s unprecedented,’ Healy said. ‘It’s unlikely that the municipality’s request to the Minister will be agreed to. It’s unlikely that the Act will be amended again,’ Healy added

Source: Legalbrief 09 March 2016

JUDGE LASHES RAF OVER ‘RECKLESS’ HANDLING OF CASE

A Gauteng High Court (Pretoria) judge has slammed the ‘blasé’, ‘reckless’ handling of Road Accident Fund matters and referred the matter to the Law Society and Bar Council. Judge Sulet Potterill has handed down a strongly-worded judgment and punitive costs order against the RAF, ordering the fund to pay Happy Matidza (22) more than R5m, but also using her judgment to lash the fund and lawyers. Potterill said the case tells a story of incompetence, recklessness with public funds, possible abuse of court rules and a lack of knowledge about constitutional principles. The judge noted that Matidza’s claim was settled on the day of the trial. The only remaining issue was whether the patient required an additional prosthesis. But, in court, the judge was told the RAF had issued an instruction to settle ‘nothing’. Potterill said there was no explanation as to why the RAF lawyers had changed their position moments before the trial – not an isolated incident (Legalbrief Today has reported on similar tactics previously). She said RAF case handlers were regularly called to court to explain their actions. The attorney acting on behalf of RAF gave instructions to counsel in court without knowing the facts of the matter, the judge noted. This caused ‘blatant’ lies to be repeated in court. Even after a postponement, the attorney had still not read the facts, Potterill said.

Source: Legalbrief 08 March 2016
SEXUAL LIFESTYLE RAISED IN CUSTODY BATTLE

The courts are being asked to decide whether a BDSM (bondage, dominance and submission, sadomasochism) sexual lifestyle means a parent is unfit to bring up a child. The conundrum posed in a legal spat between two former lovers over custody of their two-year-old daughter. The 49-year-old father, a former ANC Gauteng politician, lives a BDSM lifestyle with multiple women. He brought a custody application in the Gauteng High Court (Johannesburg) when his former lover started demanding that visits with his daughter be supervised. The 34-year-old mother of his child says his lifestyle is not a suitable environment for children. In court papers she claims he has a ‘fully functional BDSM play dungeon’ and ‘many sex toys’ in his house. The father is arguing the court should base its decision on his ‘performance as a dad’ and nothing else. He is asking the court to grant him either primary or joint residency. Pending an investigation by the Family Advocate, the court has granted an interim order that allows the child to stay with her mother. She sees her father during the week and spends alternate weekends with him.

Source: Legalbrief 07 March 2016

MUNICIPALITY NOT RESPONSIBLE FOR CHILDREN

The eThekwini Municipality has been absolved of any blame for severe facial injuries suffered by a boy (8) who lost control and fell after apparently being bumped by other children on an unsupervised water slide on Durban’s South Beach. KZN High Court (Durban) Judge Esther Steyn ruled that it was the responsibility of parents to ensure the safety of their children, and that the city could not be expected to employ ‘playground police’ at all of its facilities. In her ruling, Steyn said: ‘To expect a local authority to act in circumstances where it is not expected of the parent to act would impose an unsustainable, if not intolerable, burden on them to supervise other people’s children. To expect it to employ playground police at this pool would lead to a duty to secure supervisors at all playgrounds.’

Source: Legalbrief 22 February 2016

ALL SOUTH AFRICAN LAW REPORTS – VOL 1 MARCH 2016

GOQWANA v MINISTER OF SAFETY AND SECURITY NO AND OTHERS [2016] 1 ALL SA 629 (SCA)

Criminal procedure – Search warrant – Legal requirements – A specific police officer should be identified and named; warrant should pertinently refer to the specific statute and the section or subsection thereof where a statutory offence is concerned; and the affidavit or sworn statement in support of the warrant should accompany the warrant and be handed over together with it.

GRIFFITHS v JANSE VAN RENSBURG NO AND ANOT HER [2016] 1 ALL SA 643 (SCA)

Insolvency – Setting aside of dispositions in terms of section 29 of the Insolvency Act 24 of 1936 – Whether impugned dispositions were made in the ordinary course of business – Test is whether ordinary, solvent, businesspeople would, in similar circumstances, themselves act as did the parties to the transaction – Dispositions made pursuant to void agreement not satisfying test and fell to be set aside.

Interest – Mora interest – Payment of mora interest on an award setting aside such disposition under section 32(3) of the Insolvency Act 24 of 1936 – Concept of mora relates to the time at which an obligation is due – Debt arises only on judgment and no amount due before judgment, on which mora interest can run.

LAGOON BEACH HOTEL (PTY) LTD v LEHANE NO AND OTHERS [2016] 1 ALL SA 660 (SCA)

Evidence – Hearsay evidence – Admissibility – Court endorsing practical and common sense approach – Where appellant had admitted much of the hearsay and had not sought to challenge additional matter, evidence held to be admissible.

Insolvency – Cross-border insolvency – Recognition of foreign trustee – While a foreign trustee seeking recognition in South Africa must ordinarily establish that the insolvent party was domiciled within the jurisdiction of the foreign court that appointed him, that is not an inflexible rule, and in exceptional circumstances the requirement of domicile will not be insisted upon.

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS v KLOOF CONSERVANCY [2016] 1 ALL SA 676 (SCA)

Environmental law – Duties imposed on Minister of Water and Environment Affairs by National Management: Biodiversity Act 10 of 2004 – Failure by Minister to publish a national list of alien and invasive species and regulations
within the time required by section 70(1)(a) of National Management: Biodiversity Act – High Court issuing order requiring Minister to ensure that all organs of State in every sphere of government, discharge relevant duties – Court concluded that having regard to principles of legality, separation of powers and co-operative government, it was not competent for the High Court to make such declaratory orders.

REGISTRAR OF PENSION FUNDS v HOWIE NO AND OTHERS [2016] 1 ALL SA 694 (SCA)
Pensions – Registrar of Pension Funds – Locus standi to challenge on review, an Appeal Board decision with which she disagrees – Registrar may not become a party to appeal proceedings in a sense that would permit her to adopt an adversarial position vis-à-vis the Appeal Board – Court finding that Registrar does not have locus standi to review the decision of the Appeal Board.

TELLUMAT (PTY) LTD v APPEAL BOARD OF THE FINANCIAL SERVICES BOARD AND OTHERS [2016] 1 ALL SA 704 (SCA)
Pensions – Surplus in pension fund – Apportionment of – Apportionment by trustees undertaken as part of an overall scheme for the outsourcing of pensions and enhancement of pension benefits – Implementation of distribution scheme involving transfer in terms of section 14 of the Pension Funds Act 24 of 1956 – Approval of scheme by Registrar of pension Funds overturned by Appeal Board of Financial Services Board – Appeal Board failing to give sufficient consideration to the fact that the section 14 application was part of a broader scheme of distribution agreed upon by the trustees when dealing with apportionment of surplus – Failure by Appeal Board to take into account relevant considerations in arriving at its conclusion resulted in its decision falling to be reviewed and set aside.

BLUE NIGHTINGALE TRADING 397 (PTY) LTD T/A SIYENZA GROUP v AMATHOLE DISTRICT MUNICIPALITY [2016] 1 ALL SA 721 (ELC)
Administrative law – Procurement – Where an organ of State had procured goods or services under a contract preceded by due processes in compliance with the prescribed supply chain management policy, then another organ of State which requires the same goods or services, may contract with the first organ of State for the supply of such goods or services – Regulation 32(1) of the Municipal Supply Chain Management Regulations – Interpretation of – Regulation 32 had to be restrictively interpreted, and could not detract from or erode the constitutional imperatives of fairness, equity, competitiveness and cost-effectiveness.

BURGER AND ANOTHER v EXECUTOR OF THE ESTATE OF THE LATE MALAN NO AND OTHERS [2016] 1 ALL SA 733 (WCC)
Succession – Validity of wills – Expert evidence – Conflicting opinions of expert witnesses – In the evaluation of expert evidence, the court has to determine whether and to what extent the opinions advanced by an expert is founded on logical reasoning – Where experts differ, the court must decide which of the competing experts is the most credible and factors such as reputation and experience play an important role in the course of such a determination.

DU PLOOY NO AND OTHERS v DE HOLLANDSCHE MOLEN SHARE BLOCK LTD AND ANOTHER [2016] 1 ALL SA 748 (WCC)
Company law – Security register of company – Shareholder not reflected in register – Effect on ownership of shares – Owner (or the registered member) can sell certificated shares and cede the rights attached to them, passing the property in them independently of and prior to the registration of the purchaser.

EX PARTE HARRIS (FAIRHAVEN COUNTRY ESTATE (PTY) LTD AS INTERVENING PARTY) [2016] 1 ALL SA 764 (WCC)
Insolvency – Application for rehabilitation – Application to intervene – Such application not a prerequisite to a party being heard in opposition to an application for rehabilitation – Abuse of court’s process – Court dismissed application were such is without merit, not bona fide and an abuse of the process of the court.

Insolvency – Application for rehabilitation – Test – Insolvency Act 24 of 1936 – Section 124 of the Insolvency Act provides for an application for rehabilitation which may be brought within various stipulated time-frames varying between three and five years depending on the circumstances – In casu, that four-year period had lapsed and, under section 124(2)(a), the requisite twelve-month period after the confirmation by the Master of the first trustees’ account in the estate had also lapsed – Applicant satisfied the Court that he was a fit and proper person to be permitted to trade with the public on the same basis as any other honest business person.

JP v JC AND ANOTHER [2016] 1 ALL SA 794 (KZD)
Family law – Custodial parent – Permission to relocate with minor children – Issues for determination were whether the applicant’s decision to relocate is bona fide, reasonable and genuinely taken; and whether it was in the best interests of
the minor children – Court must carefully weigh and balance the reasonableness of the primary caregiver’s decision to relocate, the practical and other considerations on which such decision is based, the competing advantages and disadvantages of relocation, and finally how relocation will affect the child’s relationship with the non-primary giver.

**MCBRIDE v MINISTER OF POLICE AND OTHERS (COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION AND ANOTHER AS AMICI CURIAE) [2016] 1 ALL SA 811 (GP)**

Constitutional law – Police overseeing body – Independent Police Investigative Directorate – Independent Police Investigative Directive Act 1 of 2011 (“IPID”) – Protection from political interference – Constitutional invalidity – Section 206(6) of the Constitution creates an obligation to establish an independent police complaints body, which the Legislature has purported to create in the form of IPID – Court held that insofar as the relevant provisions of the IPID Act, the Public Service Act, 1994 and regulation 13 of the IPID Regulations purported to authorise the Minister of Police to unilaterally suspend, discipline, and remove from office the Executive Director of IPID, and accordingly do not provide for any parliamentary oversight in the suspension and removal of the Executive Director, the provisions were unconstitutional and invalid.

**PRETORIA SOCIETY OF ADVOCATES v SALEMANE AND ANOTHER [2016] 1 ALL SA 847 (GJ)**

Legal practice – Admission as an advocate – Academic requirements in terms of section 3 of the Admission of Advocates Act 74 of 1964 – Erroneous admission – Application by Society of Advocates based on Uniform Rule 42(1)(a) on grounds that order was erroneously obtained by first respondent due to first respondent not being in possession of requisite LLB degree and therefore not qualified to have been admitted as advocate of High Court – Court held that court a quo was not fully appraised of first respondent’s academic qualification – Order purportedly admitting first respondent as an advocate reviewed and set aside.

**SOUTH AFRICAN AIRWAYS SOC v BDFM PUBLISHERS (PTY) LTD AND OTHERS [2016] 1 ALL SA 860 (GJ)**

Civil procedure – Ex parte order – Entitlement to – Improper service – Urgent applications in terms of rule 6(12) of the Uniform Rules of Court – Effective service is not a collegial courtesy, but a mandatory duty.

Civil procedure – Interdict – Publication of confidential document – Right to confidentiality – If confidentiality not yet breached, an interdict may be an appropriate form of relief to preserve confidentiality – If confidentiality in information subject to a claim of legal advice privilege is lost or any other information loses its attribute of confidentiality, then unlikely that any interdictory relief can be effective.

Civil procedure – Legal professional privilege – Ambit and nature of – Species of confidential information and not an absolute right in South African law – It is a negative right to prevent admission into evidence of advice obtained from a legal advisor in confidence.

Source: [www.Legalbrief.co.za](http://www.Legalbrief.co.za)

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**BUTTERWORTHS CONSTITUTIONAL LAW REPORTS – MARCH 2016**

**STEENKAMP AND OTHERS v EDCON LIMITED 2016 (3) BCLR 311 (CC)**

Labour law – employment – dismissal – nature of dismissal viewed in light of overall scheme of the Labour Relations Act 66 of 1995 – concept of “unlawful” or “invalid” dismissal irreconcilable with scheme of the Labour Relations Act – what the Act provides remedies for is a dismissal which is unfair – rationale for policy decision to formulate legislative provisions in the Act so as create a dispensation regulating relief for unfair dismissals that will be flexible and will operate in a way so as to be fair to both employer and employee in each particular case.

Labour law – unfair dismissal and unfair labour practices – dismissals based on operational requirements by employers with more than 50 employees – section 189A of the Labour Relations Act 66 of 1995 – situations where facilitator not appointed – section 189A(8) – notice to terminate contracts of employment – notice to terminate contracts issued prematurely – employer failing to comply with time periods – effect – may render dismissals unfair but does not have effect that dismissals are “invalid” – concept of “invalidity” irreconcilable with remedies provided in the Labour Relations Act and not in keeping with the purpose of the Labour Relations Act.
Labour law – arbitration – review of award by arbitrator made under the auspices of the Commission for Conciliation, Mediation and Arbitration in terms of the Labour Relations Act 66 of 1995 – section 145 of the Labour Relations Act – application by respondent to dismiss review application for failure to prosecute it expeditiously and in accordance with the rules – protracted delay in prosecution of review – applicant adopting stance that reconstructed record, such as it was, not sufficient to pursue the review application and that a hearing de novo should occur – Labour Court dismissing review application for failure to prosecute it expeditiously – Constitutional Court refusing leave to appeal – Constitutional Court reiterating need for labour matters to be dealt with expeditiously – excessive delays in litigation tending to induce reasonable belief on the part of the successful opponent that the order or award in its favour has become unassailable.

Labour law – employment contract – termination of employment – employee tendering resignation – effect – whether once given, the notice is final and cannot be withdrawn, except by consent – whether legal effect of notice of resignation requiring modification in light of constitutional guarantee to workers of fair labour practices and constitutional injunction that courts must develop the common law to give effect to the nature, purport and objects of the Bill of Rights – question raised but not decided.

Source: https://jutalaw.co.za/newsletter/industrial-law-journal-preview/

**BILLS**

**DEEDS REGISTRIES AMENDMENT BILL, 2016**
Explanatory memorandum published for comment GG 39793 (09.03.16)

**NATIONAL LAND TRANSPORT AMENDMENT BILL, 2015**
Notice of intention to introduce and explanatory summary published GG 39798 (10.03.16)

**PROCLAMATIONS AND NOTICES**

**Department of Social Development**
White Paper on the Rights of Persons with Disabilities published GG 39792 (09.03.16)

**Department of Water and Sanitation**
Extension of comment period on Draft National Sanitation Policy 2016 published in GenN 70 in GG 39688 of 12 February 2016 published GG 39789 (08.03.16)

**MARINE LIVING RESOURCES ACT 18 OF 1998**
Regulations Relating to Small-scale Fishing, 2015 published GG 39790 (08.03.16)

**PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**
Department of Agriculture and Rural Development: Section 14 manual published GG 39791 (09.03.16)

**ARCHITECTURAL PROFESSION ACT 44 OF 2000**
Fees and charges for the financial year 1 April 2016 to 31 March 2017 published for comment GG 39786 (07.03.16)

**ELECTRONIC COMMUNICATIONS ACT 36 OF 2005**
Independent Communications Authority of South Africa (ICASA): Notice of applications received for Multiplexer 3 (MUX 3) radio frequency spectrum licences to provide commercial subscription television broadcasting services published for comment GG 39797 (10.03.16)

**NATIONAL REGULATOR FOR COMPULSORY**
Proposed amendment to the compulsory specification for the safety of flexible cords for electrical appliances (VC GG 39796 (10.03.16)
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<td>Proposed amendment to the compulsory specification for electrical motor-operated hand-held tools, transportable tools and lawn and garden machinery (VC 9105) published for comment</td>
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<td>COMPANIES ACT 71 OF 2008</td>
<td>Notice to service providers: Request for Information (RFI) for an on-line customer enquiry system published</td>
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<td>USE OF OFFICIAL LANGUAGES ACT 12 OF 2012</td>
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<td>PG 157</td>
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<td>Constitution of the Republic of South Africa, 1996; Rationalisation of Local Government Affairs Act 10 of 1998; and Local Government: Municipal Systems Act 32 of 2000: City of Tshwane Metropolitan Municipality</td>
<td>Fire Brigade Service By-laws published with effect from a date by proclamation in the Provincial Gazette</td>
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<td>Kwazulu - Natal</td>
<td>Amendment notice to the Planning and Land Use Management Bylaw, 2015 as published under MN 7 in PG 1619 of 26 February 2016 published</td>
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<td>Ndwedwe Local Municipality</td>
<td>Planning and Land Use Management By-law, 2016 published</td>
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<td>Ubuhlebezuwe Local Municipality</td>
<td>Planning and Land Use Management By-law, 2016 published</td>
<td>PG 1632</td>
<td>04.03.16</td>
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<td>KwaSani Local Municipality</td>
<td>Planning and Land Use Management By-law, 2015 published</td>
<td>PG 1633</td>
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<td>Disaster Management Act 57 of 2002</td>
<td>Extension of the declaration of a KwaZulu-Natal Provincial State of Drought Disaster for a period of one month from 11 March 2016 to 10 April 2016 published</td>
<td>PG 1634</td>
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<td>KwaZulu-Natal Amafa and Research Institute Bill, 2016</td>
<td>Together with the memorandum on the objects of the Bill published for comment</td>
<td>PG 1635</td>
<td>09.03.16</td>
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### Local Government:
  - Okhahlamba Local Municipality: Notice of Draft IDP Review and Draft Budget for the 2016/2017 financial year published for comment
  - PG 1636 (10.03.16)

### Spatial Planning and Land Use Management Act 16 of 2013
- Establishment of the uThungulu North Joint Municipal Planning Tribunal and commencement of operations published
  - PG 1639 (10.03.16)

### Local Government:
  - Ugu District Municipality and Hibiscus Coast Local Municipality: South Coast Development Agency Service Utility Disestablishment By-law published with effect from 1 January 2016
  - PG 1639 (10.03.16)

### Limpopo Liquor Amendment Act 5 of 2015
- Date of commencement: to be proclaimed
  - Amends: Limpopo Liquor Act 5 of 2009
  - PG 2683 (10.03.16)

###Mpumalanga
- **Municipal Structures Act 117 of 1998**
  - Draft notice of the disestablishment of existing municipalities and the establishment of a new municipality published for comment
  - PG 2663 (09.03.16)

###Western Cape
- **Western Cape Health Facility Boards and Committees Bill, 2016**
  - Together with the Memorandum on the objects of the bill published for comment
  - PG 7577 (03.03.16)

- **City of Cape Town Metropolitan District**
  - Amendment notice to Special Rating Area By-law, 2012 as published under LAN 24808 in PG 7015 of 20 July 2012 published
  - PG 7578 (04.03.16)

###SEMINARS

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<td>EVICTIONS AND RENTALS</td>
<td>Midrand: 10 May 2016&lt;br&gt;Cape Town: 07 June 2016&lt;br&gt;Durban: 19 July 2016</td>
<td>Cilna Steyn &amp; Peter Mennen</td>
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East London: 25 July 2016

THE END OF LITIGATION AS WE KNOW IT
Cape Town: 06 May 2016
Durban: 18 March 2016
Midrand: 18 April 2016
David Lancaster
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ENHANCE YOUR NEGOTIATION SKILLS FOR PRACTITIONERS
Pretoria: 27-28 May 2016
Johannesburg: 03-04 June 2016

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